

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROGELIO TAMAYO; TERESITA
TAMAYO,

Plaintiffs,

vs.

J.P. MORGAN CHASE BANK, N.A., *et al.*,

Defendants.

Case No.: 2:16-cv-00824-GMN-NJK

ORDER

Pending before the Court is the Motion to Strike, (ECF No. 18), filed by Defendant J.P. Morgan Chase Bank, N.A. (“Defendant”). Plaintiffs Rogelio Tamayo and Teresita Tamayo (collectively “Plaintiffs”) filed a Response, (ECF No. 19), and Defendant filed a Reply, (ECF No. 21). For the following reasons, the Motion to Strike is GRANTED.

I. BACKGROUND

This case arises from Plaintiffs’ claims alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692. On April 12, 2016, Plaintiffs filed their Complaint, (ECF No. 1), in this Court. On August 9, 2016, Plaintiffs filed a “First Amended Complaint,” (ECF No. 14), without leave of the Court. In the instant Motion, Defendant asks the Court to strike the proposed First Amended Complaint.

II. DISCUSSION

Pursuant to Federal Rule of Civil Procedure 12(f), a “court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule

1 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a). Otherwise, a party must seek
2 leave of court to amend a pleading or receive the opposing party’s written consent. Fed. R. Civ.
3 P. 15(a)(2). Here, Plaintiffs’ proposed First Amended Complaint was not filed within twenty-
4 one days of serving the Complaint or service of a relevant motion. Accordingly, Plaintiffs
5 required leave of court or Defendant’s consent to amend. Because Plaintiffs failed to procure
6 either, the proposed First Amended Complaint is unauthorized.


7 Plaintiffs admit they “may have been mistaken in believing that a motion to the court for
8 leave of court was not necessary,” (Resp. ¶ 1, ECF No. 19), and have since filed a Motion for
9 Leave to File an Amended Complaint, (ECF No. 25). The Court therefore concludes that
10 Plaintiffs recognize that the proposed First Amended Complaint was improperly filed and do
11 not oppose the Motion. Accordingly, the Court GRANTS Defendant’s Motion and strikes the
12 proposed First Amended Complaint, (ECF No. 14).

13 **III. CONCLUSION**

14 **IT IS HEREBY ORDERED** that Defendant’s Motion to Strike, (ECF No. 18), is
15 **GRANTED**.

16 **IT IS FURTHER ORDERED** that the proposed First Amended Complaint, (ECF No.
17 14), is **STRICKEN**.

18 **DATED** this 27 day of November, 2016.

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23 Gloria M. Navarro, Chief Judge
24 United States District Judge
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